When Two Wrongs Make a “Right”

Achinthi Vithanage, Robert Habermann 2021-03-31T09:00:14

History has shown us that global crises have prompted strong human rights responses. The atrocities of the world wars led to a re-evaluation of the human condition that demanded the determination of foundational human rights. Today, climate change and COVID-19 pose similar human condition-altering events. A new human right to energy, both inherent and derived, is necessary to ensure the systemic change that leads to a just and equitable world.

Perhaps coining the right to energy as a “new” human right is a bit unfair, as the concept has not eluded minds to date. Over two decades ago, Droit L’Energie-SOS Future, an international NGO dedicated to the recognition of the right to energy as a fundamental human right, insisted that the Millennium Development Goals (MDGs) would not be achieved without universal access to energy. The right to energy, however, is contested by those disfavouring the evolution (and therefore extension) of rights from those solely focused on human needs to the array of rights that proffer human benefit. Furthermore, there has been discussion about how to qualify a right to energy, as energy is “not one thing”, and form and quality matter. Yet, therein lies our premise that the conditions created and accentuated by climate change and COVID-19 demand creating a new human right to energy in its renewable form.

Climate change has profoundly altered the human condition, transforming energy access and use from a basic human necessity into a fundamental human right. As temperatures soar, air-conditioning and refrigeration become more than just a luxury. Hot temperatures have been shown to decrease worker productivity and increase worker absenteeism, causing economic losses. Through fluctuations in precipitation, increased drought risk, and snowpack reduction, water supplies will become stressed, generating further competition among its uses. Indeed, most thermally operated power plants rely on large amounts of cooling water, and the production of hydroelectricity depends on the predictable flow of this resource. Desertification may, in turn, require the use of increasingly energy-intensive methods to access water. There will be considerable energy needs to drill deeper to access and pump water from drying aquifers, construct and run more desalination plants, or distribute irrigation water over increasingly longer distances. Global warming also leads to changes in agricultural productivity, which may drive the need for electricity to power alternative equipment or methods of farming.

The COVID-19 pandemic has also proven how energy for all is no longer an aspirational goal but a fundamental right. The ability of many employees to transition to a virtual work environment was only enabled by reliable residential access to electricity and the internet. The same goes for the delivery of education, with schools and universities of all levels transitioning to online learning. For some, the need to avoid virus exposure meant increased cold storage at home to accommodate monthly grocery trips. With hospitals at full capacity during the peaks of the pandemic, strains on the electrical grid and service interruptions could prove deadly.

Our reliance on electricity for life-saving machines like ventilators, critical for direct COVID-19 patient care, elevates energy access to a health issue. Even as vaccines emerge, the need for electricity is heightened as many of the vaccines shown to be most effective to date, the RNA-based Pfizer and Moderna vaccines, require below-freezing temperatures for storage.

Without access to energy, achieving the United Nations' sustainable development mantra of "leaving no one behind" is firmly at risk. In poor, rural, or under-developed areas that have unreliable electricity supplies or lack grid connections altogether, increased exposure to hot days exacerbates the risk of heat-related illnesses and mortality. In the shadow of a warming planet, access to energy becomes a necessary right in the pursuit of global equity and justice. Likewise, new norms under COVID-19 may deprive energy-poor communities of access to essential medication, vaccines, and treatment, as well as virtual/remote work opportunities and online education. It is for all these developing conditions that climate change, and now COVID-19, have driven the need to recognize a new right to energy.

More Energy Need Does Not Necessarily Mean More Carbon Emissions

As the use and combustion of fossil fuels provide most of the world's current energy supply, a right to energy may seem counterintuitive to addressing climate change. However, we are proposing a right to "renewable" energy, that is, inherently free and accessible sources of power such as the sun, wind, waves, water-flows, and geothermal heat. By qualifying the right as such, it shall not run afoul of, and would indeed support, international climate agreements to reduce greenhouse gas emissions. In addition, access to energy was popularized under the Sustainable Development Goals (SDG), where SDG 7 calls for ensuring "access to affordable, reliable, sustainable and modern energy for all". While the goal stops short of recognizing access to energy as a human right, the goal reflects the necessity of sustainable energy access for meeting human needs. However, the challenge lies in the cost of converting a right to energy into actionable projects that capture and equitably distribute renewable electricity to those in both the Global North and South.

Is the Right to Renewable Energy a Derived Right or an Inherent Right?

As is traditionally understood, an inherent right is one that carries universal importance for humans, such as the right to life or adequate housing, while a derived right is one that is derived from other universal human rights. Notably, the right to water, a natural element that is vital for human survival, is identified as a derived right under the International Covenant's Article 11 right to an adequate standard of living. Its formulation is one of "access" to essential services like clean water and sanitation, rather than an inherent right to the natural resource itself. If we were to follow this trend, the right to energy would be framed as one of "access to renewably-sourced electricity." However, we argue that the right to renewable energy is both an inherent right *and* a derived right that exists by virtue of the current human context. Fundamentally, the source of renewable energy is an inherent right available to all human beings no matter race, sex, nationality, language, religion, or other status; all humans are entitled to the photons from the sun, the heat from the earth's core, or the blowing wind. However, the capture and delivery of these

resources is a derived right; a right that has become a necessary component of the current human context due to climate change and COVID-19.

With more countries seeking a renewable energy transition in response to climate change, the ability of humans to function in such a society successfully will become virtually impossible without access to renewable energy. Thus, climate change elevates the right to energy to one of universal significance for humans. Likewise, our increasing reliance on the ability to function remotely in a pandemic exemplifies the human necessity of energy access.

Already, numerous other basic human rights are unattainable today without access to energy. For example, as billions of humans undergo lockdown, electricity allows them to virtually reach medical support for mental health issues arising from isolation, inextricably linking the right to renewable energy to the International Covenant's Article 12 right to the highest attainable standard of physical and mental health. Or as countries grapple with climate change-induced natural hazards, energy access brings light for temporary shelters and provides internet access for the global outreach for assistance. The right to life and human dignity, as enshrined within Article 3 of the Universal Declaration of Human Rights, is thus bound to the right to energy for climate change-impacted human beings.

Codifying the Right to Energy

We suggest a few avenues to further explore in codifying the right to energy. First, we propose incorporating the inherent right to renewable energy via a new international covenant similar to the International Covenant on Economic, Social, and Cultural Rights or the International Covenant on Civil and Political Rights. Both covenants build upon the Universal Declaration of Human Rights and could serve as a model for a right to energy framework. Other environmental rights could also be considered as part of a new "International Covenant on Environmental Rights", such as a right to water, a right to a healthy environment, and a right to sustainable development.

Second, we propose incorporating the derived right to energy into the mandate of multilateral institutions such as the World Bank. The World Bank already finances and invests in projects in support of Goal 7 of the Sustainable Development Goals: ensuring access to affordable, reliable, sustainable, and modern energy for all. However, incorporating a right to renewable energy into the Articles of Agreement of the various World Bank Group entities, such as the International Bank for Reconstruction and Development (IBRD) or the International Finance Corporation (IFC), would realign the legal and institutional foundation for their work. By shifting the organizational mandate towards ensuring a right to energy, or other "new" human rights, the organizations will be bound to work to deliver change at the necessary scale to protect these rights. In the case of the IBRD or IFC, this would entail directing capital towards projects that seek not to simply "further economic development" but to ensure that a human right to energy is protected and advanced. Defining "development" as "sustainable development" within institutional mandates can offer a starting premise for this objective.